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UNCLAS SECTION 01 OF 02 MAPUTO 000025

SIPDIS

STATE FOR AF/S, AF/EPS, EB/IFD/OIA

MCC FOR BRIGGS AND GAULL

STATE PASS OPIC FOR WATSON AND SHORE

SENSITIVE

E.O. 12958: N/A

TAGS: [EINV](#) [MZ](#) [OPIC](#)

SUBJECT: MEETING WITH PRESIDENT-ELECT GUEBUZA ON OPIC-SUPPORTED NYATI BEACH LODGE INVESTMENT

Refs: A) 2004 Maputo 1446; B) 2004 Maputo 1539

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1. (SBU) Summary: OPIC-supported investor Dave Herbert continues to be under threat from a claimant to the land on which his Nyati Beach Lodge is located. It appears that plans by the claimant to take possession of the lodge and evict guests on December 31 were frustrated when the Minister of Interior told the provincial police not to enforce a recent court order. On January 4, Charge, OPIC Senior Advisor to the President and Director of African Affairs Marysue Shore, and Herbert informed President-elect Armando Guebuza of developments. Guebuza was sympathetic but noncommittal. Herbert expects that until the High Court (currently on vacation until March) rules, the plaintiffs would continue to attempt to take possession of the lodge. End Summary.

2. (SBU) Reftels describe background of the case involving OPIC-supported investor Dave Herbert. On December 30, Herbert learned that the plaintiff who is seeking to obtain control of his Nyati Beach Lodge had received an order from an Inhambane judge allowing him to use the provincial police to enforce an earlier judgment that gave the plaintiff rights to the land on which the lodge stands. This order was issued even though in late November the Attorney General made a formal recommendation to the High Court that the judge's earlier ruling be overturned. Herbert understood that the plaintiff planned to use the police to evict guests from the lodge and take possession on December 31. Herbert alerted OPIC, which alerted post. Charge informed Foreign Minister Leonardo Simao, who expressed concern and promised to call the Attorney General and the provincial governor. The following day, Herbert told post that as a result of his own team's efforts, the Minister of Interior had told the Inhambane police chief not to enforce the judgment. Herbert expected the situation to remain calm for a few days but that, until the High Court ruled, the plaintiffs would continue to attempt to evict him.

3. (SBU) On January 4, Charge, Shore, and Herbert met with President-elect Guebuza to bring him up to date on Herbert's difficulties and OPIC's concern. Shore opened the meeting by saying that in his meetings in Washington last summer, Guebuza had asked to be kept informed about the progress of OPIC-supported investments. Guebuza appeared to be familiar with some of the issues involved. Herbert explained the situation and emphasized his interest in following the law. He stated that the law had not been followed in the process to date, but that the Attorney General recognized the problems and supported his side in the case. He particularly cited the Attorney General's recommendation to the president of the High Court that the Inhambane court judgment be overturned (ref b). Herbert also noted the damage an eviction would do to tourism in Mozambique, emphasizing that he employs 70 Mozambicans at Nyati Beach Lodge and a total of 300 at his properties in Mozambique. Shore highlighted the importance of a quick High Court decision and expressed concern that the president of the High Court had apparently not seen the Attorney General's recommendation over a month after it had been sent to the court. She also explained that OPIC had suspended new lending projects in Mozambique.

4. (SBU) Guebuza was sympathetic but noncommittal, saying that he was sorry to hear about the situation but that he was not sure what he could say. He said he had some information but did not think he had it all, especially the details of the various court documents. He advised Herbert to be patient, and he noted that there were different interpretations of the law, which was why courts existed. He cited his limitations as not yet being in office but said he would "go through" the matter. He also told Shore that he was very interested in having OPIC investment, which he said sent a good signal to other investors.

5. (SBU) Herbert and Shore met on January 4 with lawyers representing Nyati Lodge, the Vilanculos Coastal Wildlife Sanctuary, OPIC, and Minister of Environment John Kachamila, who is on the Sanctuary's board. Herbert told post on

January 5 that his legal team planned to file additional appeals to increase the pressure on the Attorney General, but he acknowledged that it would not be appropriate to pressure the High Court directly.

DUDLEY